IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3975 of 1985

1. Tukaram Hari Shevale

2. Bapu Hari Shevale since deceased
by his heirs and legal representative:

(a) Smt.Parubai Bapu Shevale
(b) Mahadeo Bapu Shevale
(c) Bhimrao Bapu Shevale
(d) Hindurao Bapu Shevale
(e) Sanjay Bapu Shevale
(f) Sou. Kanta Sampat Patil
(g) Sou. Vimal Bapurao Jadhav

3. Ramchandra Ganu Shevale Petitioners

Versus

1. Smt.Laxmibai Vishnu Kulkarni
since deceased through her heirs
and legal representatives:

(a) Vishnu Pandurang Kulkarni
since deceased through his
heir and LR:

Dattatraya Vishnu Kulkarni
since deceased by his heirs
and LRs:

(i) Smt.Kika Dattatray Kulkarni
(ii) Shilpa Dattatray Kulkarni
(iii) Dipak Dattatray Kulkarni
(iv) Jyoti Dattatray Kulkarni

2. Ramesh Narayan Mahajan

3. Chandrakant Krishna Shete

4. The Maharashtra Revenue Tribunal Respondents

Mr.H.D.Gole with Mr.P.S.Gole for petitioners.
Mr.Hitendra Venegaonkar for respondents.

CORAM: B.H.MARLAPALLE,J.
June 19, 2006.

ORAL JUDGMENT:

1. The petitioners-tenants have brought in question the order passed by the Addl. Tahsildar and ALT at Karad on 27/9/1974 dismissing their application under Section 32G(4) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short). The order passed by the Additional Tahsildar came to be confirmed in Tenancy Appeal No.54 of 1976 dismissed by the Special Land Acquisition Officer No.II, Satara and the Revision Application No.5 of 1984 was also dismissed by the learned Member of the Maharashtra Revenue Tribunal confirming the said appellate order.

2. The factual matrix relevant to the petition is that the suit land admeasuring 9 Acres and 23 Gunthas from revised Survey No.438 of village Yelgaon in Karad Taluka of Satara District was owned by Smt.Sitabai @ Kashibai Ramchandra Dandge and on the tiller's day i.e. on 1/4/1957 she was a widow and hence on account of that the said tiller's day was postponed. The petitioners along with Chandrakant Shete were the tenants on the said land. Chandrakant

Shete was cultivating the land to the extent of 3 acres whereas the remaining land admeasuring 6 acres and 23 gunthas was cultivated by the petitioners. Smt.Sitabai, the original landlady died on 18/11/1968 leaving behind her two daughters viz. Laxmibai and Mandakini through her LRs. Mutation Entry No.4289 dated 17/2/1969 was mutated only in the name of Laxmibai in respect of the suit land and on 15/11/1969 Laxmibai filed an application before the Tenancy Aval Karkun, Karad under Section 29 read with Section 31 of the Tenancy Act and the application was registered as Tenancy Case No.85 of 1970. She had prayed for restoration of the land for self cultivation. By his order dated 8/11/1971 the application was allowed by the Tenancy Aval Karkun holding that Laxmibai was entitled for restoration of half of the suit land i.e. 3 acres and 11 gunthas from the possession of the petitioners and 1 acre and 20 gunthas from the possession of the other tenant viz. Chandrakant Shete. This order was challenged by the petitioners in Tenancy Appeal No.55 of 1972 and the appeal was allowed by setting aside the order dated 8/11/1971 passed in favour of the landlady i.e. Laxmibai by the Tenancy Aval Karkun, on 17/1/1973. This order received finality as it was not challenged

either by Laxmibai or by the LRs of her sister Mandakini who died on 5/5/1961 and survived by three sons and two daughters.

3. On or about 3/2/1974 the present petitioners submitted an application under Section 32G(4) of the Tenancy Act for purchase of the suit land i.e. 6 acres and 23 gunthas before the Tahsildar and ALT to determine the purchase price. This application came to be registered as Tenancy Case No.39 of 1974. The Additional Tahsildar and ALT at Karad, after hearing the parties concerned including the LRs of the original landlady held that the tenants acquired the right under Section 32 to purchase the land on 18/11/1969 and which happened to subsist till 17/11/1970 when they lost their right because they failed to send the intimations as required under Section 32F(1A) of the Tenancy Act and, therefore, he held that the tenants' purchase of the suit land was ineffective under Section 32P read with Section 32F of the Act. He further ordered the eviction of the tenants and restoration in favour of the landlords by his order dated 27/9/1974. The tenants carried this order in Tenancy Appeal No.54 of 1976 and the same

was dismissed by the Special Land Acquisition Officer on 10/2/1977. The tenants approached the Maharashtra Revenue Tribunal in Revision Application No.135 of 1977 which was allowed vide judgment and order dated 19/8/1978. However, the landlords approached this Court in Special Civil Application No.227 of 1978 and the same came to be allowed on 18/11/1983 partly by directing the Tribunal to hear the parties de novo and decide the controversy according to law. On remand the Revision Application came to be registered as Application No.5910 1984 and it was dismissed as per the judgment and order dated 8/1/1985 by confirming the order dated 10/2/1977 passed by the Special Land Acquisition Officer as an appellate authority.

4. The ALT held that after the demise of Smt.Sitabai on 18/11/1968 the suit land had fallen in the ownership of Laxmibai and the LRs of Mandakini, the second daughter of Sitabai who had died earlier in the year 1962 and, therefore, it was necessary for the tenants to make an application for the purchase of the land on or before 17/11/1970 and after this date such a right ceased to exist in favour of the tenants. By referring to the depositions of tenants

Tukaram, his brother Bapu as well as the other tenant Chandrakant Shete the ALT held that no intimation was given to the landlords for purchase of the land under Section 32 and, therefore, they had lost their right to purchase the land in view of the provisions of Section 32F(1A) prescribing the limitations. Referring to the earlier order dated 17/1/1973 passed by the Special Deputy Collector (Tenancy Appeals) rejecting the application of the landlady for restoration of the land, the ALT observed that pendency of this application did not postpone the limitation to exercise option under Section 32 of the Act beyond 17/11/1970 and in any case the LRs of Mandakini had not submitted any application for restoration and, therefore, due to the failure to give any notice of their intentions to purchase on or before 17/11/1970 they had forfeited their right to purchase the land and they were liable to be evicted. The application moved for the first time on 3/2/1974 under Section 32G(4) was thus dismissed. The appellate authority as well as the Maharashtra Revenue Tribunal have agreed with the view taken by the ALT in rejecting the petitioners' application under Section 32G of the Act and have further relied upon the decision in the case of Appa Narsappa Magdum

through LRs v. Akubai Ganapathi Nimbalkar **[AIR 1999 SC 1963]**.

5. In Appa's case (Supra) the landlady Shevantibai was a widow and, therefore, the tiller's day was postponed. She died on 8/12/1965 and the tenants gave intimation on 15/6/1968 to her LRs that they were interested in purchasing the land under Section 32F of the Act. On 9/7/1968 the LRs of Shevantibai applied under Section 32P of the Act for a declaration that as the tenant had not complied with the requirements of Section 32F, the sale had become ineffective and, therefore, possession of the land may be restored to them as their holding was less than the ceiling area. The Tahsildar had granted the application and in appeal the said order was set aside. However in revision the LRs of the landlady succeeded and the order passed by the Tahsildar was restored. This Court in a writ petition had confirmed the said order passed by the Tribunal. The Supreme Court held that Section 32F provides that in case the landlady is a widow, the tenants shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord is entitled to

terminate the tenancy under Section 31, the landlady died on 8/12/1965 and her successors-in-interest had exercised their right within one year for termination of the tenancy. On the contrary the tenants did not apply under Section 32F within the limitation prescribed and such an application for the first time was made on 15/6/1968 and under such circumstances their right to purchase the land had come to an end.

6. In the instant case, before the limitation could expire on 17/11/1970 for the tenants to apply under Section 32F of the Tenancy Act, Laxmibai had submitted an application under Section 29 read with Section 31 of the Act on 15/11/1969 and it was allowed by the Tenancy Aval Karkun on 8/11/1971. In Tenancy Appeal No.55 of 1972 filed by the tenants, this order passed by the Tenancy Aval Karkun was set aside on 17/1/1973 and by the following observations, by the Special Deputy Collector:

> "The effect of this order, subject to further legal proceedings, if any, would be that the tenants have become the deemed purchasers on the postponed day and the Agricultural Lands Tribunal should take necessary action under

sections 32 to 32R of the B.T. & A.L. Act, 1948."

7. This order passed by the Special Deputy Collector in favour of the tenants was not passed in their presence and, therefore, they were not aware of the same. This order was received by them for the first time on 16/3/1973 and thereafter they submitted their application under Section 32G(4) of the Tenancy Act on 3/2/1974. This application, therefore, cannot be considered to be beyond limitations and thus hit by the provisions of Section 32F(1A) of the Tenancy Act. The proviso below Section 32(1) reads as under:

> "Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed

date"."

Thus the landlady's application filed under Section 29 read with Section 31 of the Tenancy Act was finally rejected by the Collector in appeal on 17/1/1973 and, therefore, the tenants shall be deemed to have purchased the land on that date and the postponed date became 17/1/1973. In Appa's case the landlady had not applied for restoration of the land and the tenants did not apply for exercising their right under Section 32F of the Tenancy Act within the limitations period with reference to the date of demise of the landlady and, therefore, it was held that the application filed beyond limitations as set out under Section 32F(1A) could not be entertained as the tenants had lost the right to purchase the land. The reliance on the decision of Appa's case (Supra) by the Special Land Acquisition Officer as well as the MRT is thus misplaced and the tenant's application was erroneously rejected.

8. In the case of Nago Dattu Mahajan v. Smt. Yeshodabai Huna Mahajan **[1975 Bom.L.R. Vol.LXXVIII 427]** a Division Bench of this Court considered the similar case. The landlady was a widow on 1/4/1957

and her application for possession of the land for personal cultivation under Section 32(1) read with Section 29 of the Act was rejected on 26/12/1958 and the said order was confirmed by the Revenue Tribunal in Revision Application on 15/6/1964. The tenants had claimed to have become statutory purchasers of land on 15/6/1964 under Section 32(1)(b) of the Act. The ALT had accepted the application under Section 32G of the Act and the said order was confirmed in appeal. However, the Maharashtra Revenue Tribunal had reversed these orders by relying upon the provisions of Section 32F(1A) of the Act and on challenge to the said order before this Court the order of the Maharashtra Revenue Tribunal was set aside and the order passed by the ALT was confirmed. The Division Bench concluded its opinion in the following words:

> "As indicated earlier, s.31(3) does not contemplate resumption by a widow but only by her successor-in-title. Reference to the 'widow' in s. 32F(1)(a) as also in s.31(3) itself, is merely descriptive of the "disabled" landlord whose disability is statutorily recognised. Indeed provision is

made not so much for her benefit as for that of her successor. The words "such lands" in s.32F(1)(a) are referable, in the context, to her successor-in-title and not to widow herself. This is what Vaidya,J. also has hinted in Sujataali's case. Section 32F(1)(a) thus does not apply to every tenant of the 'disabled' landlord. The occasion for its application does not arise unless such landlord's right of resumption is found to subsist. In the event of any such landlord exhausting his or her right of resumption under s.31(1) before March 31, 1957, the question of his or her 'subsisting right' to resume the land under s. 31(3) cannot and does not arise and consequently s. 32F(1)(a) can have no application and then tenant's right to purchase is governed by s. 32(1)(b) and not by s. 32F(1)(a). It will be all the more so when the landlord happens to be a widow and she avails of such a right under s.31(1). The petitioner tenant in this case must be deemed to have become the purchaser automatically on the final rejection of respondent's application under s.31(1) on June

15, 1964."

9. In the instant case the tenants must be deemed to have become purchasers automatically in respect of the suit land admeasuring 6 acres and 23 gunthas on 17/1/1973 and, therefore, all the Tribunals below fell in gross errors in holding that the tenants failed to apply within the prescribed time limit with reference to 17/11/1970 under Section 32F of the Act and that they had forfeited their right to purchase the land by following the decision in Appa's case (Supra). While granting Rule in this petition the impugned orders were stayed and, therefore, the petitioners continue to remain in possession of the suit land to the extent of 6 acres and 23 gunthas.

10. In the result, this petition succeeds and the same is hereby allowed. The impugned orders passed on 10/2/1977 in Tenancy Appeal No.54 of 1976, on 19/8/1978 in Revision Application No.135 of 1977 and on 8/1/1985 passed in Revision Application No.910 of 1984, are hereby quashed and set aside and declared as void ab initio. The Tenancy Application No.39 of 1974 filed by the petitioners is hereby allowed to the extent of the agricultural land admeasuring 6

acres and 23 gunthas from revised Survey No.438 of village Yelgaon, Taluka Karad, Dist. Satara.

11. Rule is made absolute in terms of the above order but without any order as to costs.

(B.H.MARLAPALLE,J.)